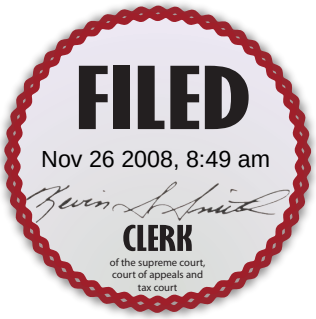


ATTORNEY FOR APPELLANT:

**JOHN T. WILSON**
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**
Attorney General of Indiana

**THOMAS D. PERKINS**
Deputy Attorney General
Indianapolis, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| JOSHUA BORDEN, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 48A05-0806-CR-352 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0710-FC-300

**November 26, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Joshua Borden appeals his sentence for three counts of Class C felony child molesting. We affirm.

## Issues

Borden raises several issues, which we restate as:

I. whether the trial court abused its discretion in sentencing him; and

II. whether his eight-year sentence in inappropriate in light of the nature of the offense and his character.

## Facts

On October 22, 2007, the State charged Borden with three counts of Class C felony child molesting based on the molestation of his seven-year-old stepdaughter, A.G. Borden pled guilty to all three counts. The plea agreement provided that the sentences would be determined by the trial court, but must run concurrently. Borden admitted to masturbating in front of A.G. and instructing A.G. to masturbate while he watched. Borden also instructed A.G. to touch him during these incidents. The molestations came to light when A.G. was found masturbating at school and explained to a teacher that her stepfather had instructed her to do it.

The trial court sentenced Borden to eight years on each count, to be served concurrently in the Department of Correction. This appeal followed.

## Analysis

### *I. Abuse of Discretion*

Borden's analysis contains numerous references to the abuse of discretion standard, without specifically setting out that standard, and merging abuse of discretion claims with inappropriate sentence claims. Our court has recently reminded practitioners that inappropriate sentence and abuse of discretion claims are to be analyzed separately. See King v. State, 894 N.E.2d 265, 266 (Ind. Ct. App. 2008). We glean one abuse of discretion argument by Borden: that the trial court failed to recognize three mitigating factors.

In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court did enter a sufficient sentencing statement that included the following aggravators: Borden violated a position of trust and he was employed as law enforcement officer. The trial court identified the following mitigators: Borden saved the State the cost of going to trial; he accepted responsibility; he had no past criminal activity; and he indicated remorse. Still, Borden argues that the trial court failed to recognize his lack of criminal history, guilty plea, and remorse as mitigating factors.

Borden's argument is contradicted by the transcript. During the sentencing hearing, the trial court stated:

> Mitigating circumstances would be that the cost of having the State go to trial, probably wouldn't have been a long trial, based upon the facts that I've heard here today and the witnesses wouldn't be that many; the defendant has accepted responsibility for the acts, has limited criminal activity in the past, [ . . .] saved the victim the trouble and embarrassment of having to testify. He's indicated remorsefulness, but as Deputy Koester pointed out, if he hadn't been caught, he probably would still be perpetuating the same act, so it sort of indicating the remorsefulness.

Tr. p. 23.

Clearly, the trial court recognized that Borden's guilty plea, remorse, and lack of criminal history served as mitigating circumstances and considered these factors in determining the sentence. The trial court determined, however, that the aggravators outweighed the mitigators. To the extent that Borden asserts the mitigators deserve more weight, we do not reweigh these factors on appeal. See Anglemyer, 868 N.E.2d at 491. The trial court did not abuse its discretion in sentencing Borden.

### *II. Appropriateness*

Borden argues that his eight-year sentence is inappropriate.[1] See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also

[1] Borden does not make the specific argument that his sentence is inappropriate given the nature of the offense and his character; rather, he sets out Indiana Appellate Rule 7(B) and then seems to argue that because the trial court improperly balanced the aggravators and mitigators, his character was not properly considered, which resulted in an inappropriate sentence. We proceed to review his sentence under Indiana Appellate Rule 7(B).

understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The nature of this crime is depraved and disturbing. Borden repeatedly molested his step-daughter in the family's home. The long term implications of this sexual abuse on the victim cannot be predicted. Borden's statement of remorse simply does not and cannot make up for the harm he inflicted on this young child.

Though his lack of criminal history could bode well for his character, the abuse of his position of trust destroys any potential for a positive character assessment. Borden, as the stepfather to his victim, was in a parenting role. He abused this role and violated the victim within her own home. Borden fails to convince us to adjust this sentence.

**Conclusion**

The trial court did not abuse its discretion in sentencing Borden. His eight-year sentence is appropriate in light of the nature of the offense and his character. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.